

Natural Resources Board
District #7 Environmental Commission
1229 Portland Street, Suite 201
St. Johnsbury, VT 05819
802-751-0120 Voice
802-748-6687 Fax

March 6, 2008

Richard J. Downing
884 Darling Hill Road
Lyndonville, VT 05851

VIA: Certified US Mail

RE: Jurisdictional Opinion #7-257
24 Feet High, Exterior, Free Standing Lit Cross Vicinity Existing Permitted Church
Darling Hill, Lyndon
Act 250 Permit #7C0600-10

Dear Mr. Downing,

I am writing in response to a request for determination of Act 250 jurisdiction for the above-described project. I note that:

- (i) I received the request from Lyndon zoning administrator Justin Smith on January 10, 2008.
- (ii) I have not been able to reach you despite multiple phone messages that I have left for you (at both 626-3763 and 508-653-2193) on January 25, 2008 and February 7, 2008.

Projects Description and Facts

According to information received from Justin Smith, the cross was recently installed on your property, is white in color, and has approximate overall dimensions of 24 feet (ground to top of cross) by 9 feet (end of arm to end of arm). I further understand that the cross has been illuminated (intermittently) with 120 watt fluorescent bulbs, with initial dawn to dusk illumination believed to be currently ceased. Reference is also made to a newspaper article as appeared in the Caledonian Record Newspaper on January 5, 2008, a copy of which is attached hereto for reference, which article includes a photograph of the project.

Jurisdictional Analysis

Natural Resources Board Rule 34 states, in pertinent part that an *amendment shall be required for any material change to a permitted development or subdivision.....* Further, *Material Change* is defined as *any change to a permitted development or subdivision which has a significant impact on any finding, conclusion, term or condition of the project's permit and which may result in an impact with respect to any of the criteria specified in 10 V.S.A. Section 6086 (a)(1) through (a)(10).*

The project lands are subject to Act 250 jurisdiction via case #7C0600-10, which permit includes the following conditions:

1. *The project shall be completed, operated and maintained in accordance with the plans and exhibits on file with the District Environmental Commission, and the conditions of this permit.*
2. *No significant changes shall be made in the design or use of this project without the written approval of the District Coordinator or the Commission, whichever is appropriate under the Environmental Board Rules.*

The plans and exhibits in the #7C0600-10 file have been reviewed and it is noted that these materials do not include a 24 foot high free-standing cross structure.

The project will be evaluated to determine if the changes *may result in an impact with respect to any of the criteria.*

The criteria specified in 10 V.S.A. Section 6086 (a)(1) through (a)(10) have been reviewed relative to the potential for impact. One criterion having potential for impact was identified, as follows:

Criterion (8) Aesthetics. The installation of a 24 foot high free standing cross structure may result in an impact.

Conclusion

The project is a *material change* and requires amendment of Land Use Permit #7C0600-10.

I further note that you will also be contacted by a member of our Montpelier-based compliance /

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enforcement staff.

Please feel free to call if you have any questions or require additional information. My direct line is 802-751-0126.

Sincerely,

Kirsten Sultan, P.E., Coordinator
District #7 Environmental Commission

Enc: Newspaper Article

c: District Commission
Ken Smith, Esq.
Justin Smith, Lyndon Zoning Administrator

This is a jurisdictional opinion issued pursuant to 10 V.S.A. § 6007(c) and Natural Resources Board Rule 3.

Reconsideration requests are governed by Natural Resources Board Rule 3 and should be directed to the district coordinator at the above address. Any appeal of this decision must be filed with the clerk of the Environmental Court within 30 days of the date of issuance, pursuant to 10 V.S.A. Chapter 220. The appellant must attach to the Notice of Appeal the entry fee of \$225.00, payable to the State of Vermont. The appellant must also serve a copy of the Notice of Appeal in accordance with Rule 5(b)(4)(B) of the Vermont Rules for Environmental Court Proceedings.

For further information, see the Vermont Rules for Environmental Court Proceedings, available on line at www.vermontjudiciary.org. The address for the Environmental Court is: Environmental Court, 2418 Airport Rd., Suite 1, Barre, VT 05641-8701. (Tel. # 802-828-1660).